

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7183 OF 2015

The State of Maharashtra and others .. Petitioners

Versus

Vishal Ganpat Jadhav .. Respondents

Shri K. G. Patil, Addl.G.P. for Petitioners.

Shri Suresh D. Dhongade, Advocate h/f Ms Suchita

Dhongade/Upadyay, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 16TH JULY, 2015.

PER COURT :

. Mr. Patil, the learned Additional Government Pleader submits that, the respondent had applied from open Project Affected Person category. The respondent was in the wait list. The post from open category was vacant. As the person from the select list did not join, the present respondent could not have been considered from the open category, as the respondent had applied from Project Affected Person category. According to the learned Addl. G. P., the Tribunal has committed an error in directing petitioners to consider the respondent from open category, as the present respondent had applied from horizontal reservation, certainly the respondent could not have been considered from open category.

2. Mr. Dhongade, the learned counsel for the respondent

submits that, in the wait list that was prepared, the present respondent was at Sr. No. 3. Two persons senior to the respondent did not join, as such, the respondent only could have been considered.

3. The learned Additional Government Pleader does not dispute that, the seat is vacant and in the common seniority list, present respondent is at Sr. No. 3. Two persons above the respondent did not join and the post is vacant. The respondent is first person who can be appointed.

4. We have considered the wait list. There is no candidate from the open category claiming appointment from the open category. Those who are from open category also applied from horizontal reservation. The respondent is senior most in the wait list. If none of them is appointed, the seat would go vacant. The Tribunal has considered this aspect of the matter and has passed the order.

5. Considering the above, the discretion has been properly exercised by the Tribunal. We are not inclined to interfere in the decision of the Tribunal. The writ petition as such is disposed of. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]